

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** July 9, 2003

**To:** The Commission  
(Meeting of July 10, 2003)

**From:** Alan LoFaso, Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** **AB 428 (Richman and Canciamilla)** - Electrical corporations:  
core, noncore, and core-elect customers.  
As Amended June 16, 2003

**Legislative Subcommittee Recommendation:** Support, if amended.

**Summary:** This bill would provide for a core/non-core model for retail delivery of electric service, limit electrical corporations' (ECs) obligation to procure electricity to core and core-elect customers, as defined, and limit direct access (DA) transactions to non-core customers and renewable DA for core customers.

**Digest:** Existing law, requires the Commission to authorize direct transactions between electricity suppliers and end use customers, subject to a non-bypassable charge.

Existing law requires the Commission to suspend direct transactions as specified. Pursuant to this statute the Commission suspended direct access beginning on September 20, 2001 in D.01-09-060, and reaffirmed its decision in D.01-10-036.

Existing law affirmed the Commission's authority to determine the "fair share" of cost responsibility to be borne by direct access customers served by DWR purchases prior to the suspension of direct access. (Chapter 838, Statutes of 2002 (AB 117, Migden).)

Existing law provides a framework for returning electrical corporations to procuring power through long-term supply contracts or other means. (P.U. Code sec. 454.5, enacted by Chapter 835, Statutes of 2002 (AB 57, Wright) and Chapter 850, Statutes of 2002 (SB 1976, Torlakson).)

Existing law provides a Renewables Portfolio Standard (RPS) applicable to ECs with provisions for Commission rules to apply RPS to electric service providers (ESPs) and community choice aggregators (CCAs). (Chapters 515 and 516, Statutes of 2002 (SB

1038/SB 1078, Sher).)

Existing law requires CCA customers to pay cost responsibility surcharges, encompassing the following:

- (a) A charge equivalent to the charge imposed by the Commission to recover DWR bond related costs.
- (b) DWR's estimated net unavoidable power purchase contract costs, determined by the Commission.
- (c) EC's unrecovered past undercollection attributable to those customers.
- (d) ECs' estimated net unavoidable power purchase contracts costs attributable to those customers. (P.U. Code sec. 366.1(e), (f).)

This bill would create a core/noncore electricity delivery system, effective January 1, 2006, structured as follows:

- "Core" customers would be small customers unable, as a result of economies of scale, to efficiently enter into direct transactions, including those with a maximum peak demand of less than 500 kw.
- "Non-Core" customers would be "large customers that, as a result of economies of scale, can efficiently enter into direct transactions, including those with a maximum peak demand of 500 kw.
- Additionally, the Commission would be authorized, by January 1, 2009, to reduced the threshold defining non-core customers to accommodate load growth and reduced DWR contract obligations, but not to a threshold lower than a maximum peak demand of 200 kw.
- The Commission would additionally be authorized to establish rules by January 1, 2009, allowing customers to aggregate demand to meet the non-core threshold.
- Non-core customers could continue to be served by electrical corporations (ECs) as "Core-elect" customers by electing to continue to be served by the EC. An election would require the core-elect customer to receive service from the EC for a minimum of three years.
- After January 1, 2006, ECs would no longer have an obligation to provide electric service ("commodity service") to non-core customers.
- The EC would continue to be responsible for providing default service to non-core customers who voluntarily or involuntarily return to EC service, subject to the EC's cost of purchasing spot electricity purchases or the tariff rate for core-elect customers opting to be served by the EC, whichever is higher.

This bill would require the Commission to develop rules to implement the core/non-core program by January 1, 2005, as follows:

- A date certain, but no later than June 30, 2005, for non-core customers to elect to continue to receive electric service from the EC as a core-elect customer or via an ESP as a non-core customer. Failure to make an election would cause that customer to receive utility power as a non-core customer at default service prices.
- Terms and conditions for non-core customers to take default service.
- Provisions to assure an EC's prompt recovery of reasonable costs to serve customers per the bill, the EC's obligation to serve, and to "ensure there is no cost shifting between customer classes."
- A method for determining rates and charges for core and core-elect customers and the default commodity service price.
- Rules for aggregation of customer load at multiple meters for purposes of determining core or non-core customer status.
- Provisions to ensure no cost-shifting between core and core-elect customers.
- A six-month notice requirement for a core-elect customer to notify an EC of its intention to leave the EC and receive commodity service from an ESP as a non-core customer.
- Rules or tariffs to allow core customers' access to renewable DA transactions that provide for cost responsibility surcharges (CRS) equivalent to those required of CCAs.

This bill would additionally require the Commission to:

- Establish rules to ensure that only non-core customers returning to EC service pay default service costs, without impacting rates or charges paid by core customers.
- Establish tariffs, by July 1, 2004, for non-core customers to wheel power over "nondedicated" EC facilities among multiple sites of a same or affiliated customer, to procure electricity from "new or expanded" generation facilities, or procure from a cogeneration facility.
- Annually establish the appropriate mix of short-, medium-, and long-term power consistent with an EC's obligations established in the bill and ensure the flexibility needed to minimize stranded procurement costs, in conjunction with the procurement process established in AB 57/SB 1976.

- Establish resource adequacy requirements, in consultation with the Energy Commission (CEC) and the Independent System Operator (ISO), for all EC customers, including non-core and CCA customers, via a nonbypassable component of transmission and distribution charges.
- Ensure that non-core customers moving from core-elect to non-core service have no obligation for future DWR or EC procurement costs, and that all EC procurement costs shall be recovered only from core and core-elect customers.
- Ensure that ESPs and CCAs meet the RPS and support demand-side management, either directly or through in-lieu arrangements approved by the Commission.

This bill would require non-core customers previously served by the EC to pay cost responsibility surcharges equivalent to those required of CCAs. Additionally, this bill would prohibit non-core customers receiving service from ESPs prior to the DA suspension date (September 20, 2001) from incurring any additional cost responsibility obligations unless they become core-elect customers.

**Analysis:** The Commission previously adopted a support if amended position on AB 428.<sup>1</sup> Although it did not specify particular amendments, the prior memo did identify specific concerns regarding AB 428's relationship to the proceeding currently undergoing at the Commission, such as the cost responsibility surcharge (CRS) proceeding (R. 02-01-011) and the procurement rulemaking (R. 01-10-024). In the later proceeding, the Commission is overseeing short-, medium-, and long-term procurement for utilities and fulfilling its direction under SB 1078 to develop a means to implement the RPS in the competitive retail market. Moreover, the memo identified a concern regarding a need to determine how resource planning will occur for non-core customers.

The most recent amendments to AB 428 largely recast the bill, altering some of the provisions of the proposed core/non-core program, including:

1. Limiting eligibility for DA to core customers to renewable DA only.
2. Making minor revisions in the timing of the implementation of the core/noncore program.
3. Expanding Commission discretion to lower the threshold defining non-core customer by removing the reliance on CEC demand forecasts.
4. Providing for Commission regulation of arrangements between non-core customers electing to remain with the EC, instead of direct contracts between non-core customers and ECs.

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<sup>1</sup> See May 7, 2003, Legislative Memo, re: AB 428 (Richman).

5. Providing clearer cost responsibility obligations for non-core customers returning to EC service ("re-entry fees").
6. Adding Commission oversight or rules for aggregating load to meet the non-core threshold.

### **Commission adopted principles**<sup>2</sup>

On June 19, 2003, the Commission adopted the following principles regarding market restructuring legislation:

1. Core customers would continue to receive electric generation service from Commission-regulated investor-owned utilities (IOUs), with cost-of-service regulation that allows for appropriate performance-based ratemaking according to Commission regulation.
2. Ensure Commission authority to require utilities to provide stability, reliability, and reasonable rates for IOU customers through integrated least cost planning principles using short-, medium-, and long-term contracts and utility retained generation, where appropriate. Procurement rules should promote, not inhibit, increased reliance on renewable power sources and integrated resource planning (IRP) to optimize energy efficiency, conservation, and demand reduction.
3. Provide an environment that promotes the development of needed additional electric generation, available to California consumers.
4. Support the Commission's procurement rulemaking (R.) 01-10-024, implementing AB 57/SB 1976 and SB 1038/SB 1078 of 2002.
5. Support the joint agency Energy Action Plan (EAP) goals promoting enhanced reliability, including, but not limited to, the RPS acceleration, energy efficiency and demand reduction investments, and distributed generation resources.
6. Require competing electric providers to adopt the Renewables Portfolio Standard (RPS).
7. Retain the obligations of non-core customers who purchased power from an electrical corporation on or after February 1, 2001, to bear a fair share of DWR electricity purchase costs and contract obligations, as well as other costs to avoid cost-shifting, consistent with existing law.

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<sup>2</sup> See June 18, 2003, Legislative Memo, re: SB 888 (Dunn, et.al.).

8. Provide options for non-core electricity customers to be served by IOUs according to terms developed by the Commission that would provide for feasible planning horizons for IOU procurement.
9. Require that non-core customers returning to default service with IOUs pay costs associated with re-entry to IOU/default electricity service, including the current requirement to pay cost responsibility surcharge (CRS) undercollection and any incremental costs to the utility of re-entry.
10. Require IOUs, as distribution utilities, to be responsible for maintaining resource adequacy, defined by the Commission and pursuant to Commission regulation.
11. Provide for financially healthy utilities that are able to meet procurement obligations.
12. Support public purpose programs established in AB 1890.
13. Preserve appropriate Commission discretion in all ratemaking functions associated with the proposal.
14. Allow for additional customer “green power” options via IOUs and, ultimately, competing providers.
15. Rules should promote, not limit, technological improvements in delivery of utility service, such as advanced meters.
16. Provide adequate consumer education regarding any new retail electricity options.

From the standpoint of these principles, AB 428 contains several favorable elements: it provides a core/non-core model; it largely relies on the existing procurement process for core and core-elect customers; it accounts for RPS implementation for competing providers and access to “green power” for core customers; and it specifies a mechanism for assessing the costs of resource adequacy.

AB 428 is an aggressive deployment of this new structure. The following represent some issues that may warrant further scrutiny and amendments before the Commission supports AB 428:

**A. Definitions of “core” and “noncore”.**

1. Qualitative factors: In addition to defining core and non-core on the basis of a customer’s maximum peak load, the language specifies a customer’s ability or inability, as a result of economies of scale, to efficiently enter into direct transactions, as a criterion for determining core or non-core status. These qualitative definitions should

probably be removed from the bill because they create ambiguities regarding a customer's status and could be abused. (If these qualitative definitions operate independent of the quantitative definition, a large user above the kW threshold might be able to claim a right to core service at below the default price for non-core service by arguing that economic circumstances had made direct transactions inefficient for that user.)

2. Aggregation: Current law provides for aggregation of smaller customers to allow for economies of scale to make direct transactions efficient. Commission rules require interval meters to guard against cost shifting for these users. AB 428 provides for this occurrence and would assign the Commission to develop appropriate rules.

3. Existing DA customers: AB 428 does not explicitly account for existing direct access customers who do not meet the bill's non-core threshold. To prevent disruption of existing service arrangements and guard against unconstitutional impairment of contracts, the bill should be amended to grandfather existing direct access contracts, as long as they remain viable for those customers.

**B. Status of “noncore” customers receiving utility service.** Under AB 428, large customers may continue to receive utility service in either of two ways. A customer may be a “non-core customer receiving default service” or a “core-elect” customer. A core-elect customer is required to maintain its relationship with the utility for a minimum of three years, and must provide six months notice of its intention to leave utility service after the three years. The Commission would set rates for this type of service.

As a non-core customer receiving default service, a large customer would not be locked into service with the utility for any specific period of time. Non-core customers' costs for default service are the greater of the following: the utility's cost of purchasing electricity on the spot market or the rate core-elect customers pay for utility-supplied electricity.

AB 428 would require the Commission to develop rules to determine the terms for non-core customers taking default service, including how long the non-core customer could receive default service without being required to be locked into the utility as a core-elect customer or leave utility service.

**C. Utility procurement planning and re-entry fees.** Presumably, most large customers opting for utility service under AB 428's structure would opt for core-elect service. Rules to be developed by the Commission are intended to limit the period large customers can receive default service as non-core customers without committing themselves to utility service for three years. However, it is unclear how long such a user would have to be away from utility service before returning again to default service. The bill authorizes the Commission to develop rules governing these timelines. However, the bill does not provide for additional re-entry fee authority to compensate utilities for any additional costs of “coming and going”. Moreover, AB 117 of last year

incorporated provisions governing bonding to ensure that these costs would be paid.<sup>3</sup> AB 428 should not supersede these provisions.

**D. Anti-cost-shifting provisions.** AB 428 contains a number of anti-cost shifting provisions:

- Commission rules must “ensure there is no cost shifting between customer classes” (Proposed P.U. Code sec. 367.7(e)(3);
- Commission rules must “ensure that no cost shifting occurs between core and core-elect customers (sec. 367.7(e)(6);
- Non-core customers taking non-utility service after January 1, 2006 would be required to pay cost responsibility elements identified in P.U. Code section 366.1 (sec. 367.7(h))<sup>4</sup>;
- Existing DA customers must not “incur any additional obligations ... unless they become core-elect customers” (sec. 367.7(h));
- The Commission is required to ensure that customers moving from core-elect to non-core service “shall not have an obligation for any future [DWR or EC procurement] costs” (sec. 367.7(j)); and
- Core customers receiving “green” DA would be required to pay cost responsibility as identified in P.U. Code sec. 366.1 (sec. 367.7(l)).

The provision barring cost shifting between customer classes is unnecessary, representing an unprecedented restriction of Commission rate design responsibilities. (“Customer classes” commonly refers to ratepayers within the EC—e.g., residential, small commercial, agricultural.) To the extent AB 428 properly seeks to protect the core ratepayer by barring cost-shifting between core and core-elect ratepayers, that concern is addressed in another portion of the bill.

Non-core customers are protected from future DWR procurement obligations, although existing law does not authorize additional DWR procurement obligations. This provision could be interpreted to include aspects of the current CRS, which consists of “(3) DWR power charge applicable to *prospective costs* for calendar year 2003, representing DA customers’ share of the uneconomic portion of DWR costs... (emphasis added)”<sup>5</sup> There is currently a decision before the Commission to extend the CRS “for the period beginning on and after July 1, 2003.”<sup>6</sup> AB 428 should be clarified not to exclude these charges.

Finally, proposed P.U. Code sec. 367.7(f) requires the Commission to develop rules to allow for wheeling of power on non-dedicated electrical corporation facilities for specified non-core customers. This provision raises potential cost-shifting concerns for other distribution and transmission customers. It should either be deleted or the users

<sup>3</sup> See P.U. Code section 394.25 (as amended by Chapter 838, Statutes of 2002).

<sup>4</sup> See digest, above, under “existing law” for an enumeration of these costs.

<sup>5</sup> See D. 02-11-022, p. 4.

<sup>6</sup> See Commission agenda, Meeting of July 10, 2003, Item H-13, #2267, Ordering paragraph #1.



under this provision should be subject to Commission regulatory jurisdiction and potential CRS for any cost-shifting that might occur as a result of this provision.

**E. Procurement:** AB 428 would require the Commission to annually establish the appropriate mix of long-, medium-, and short-term supply. Prior to repeal of the former Biennial Resource Plan Update, an analogous function occurred only every 2 years. AB 57/SB 1978 did not specify timelines for procurement plans, and that flexibility should remain. Therefore, this provision is unnecessary.

**F. Energy Efficiency and Demand Side Reduction:** AB 428 provides for assessment of resource adequacy requirements via a nonbypassable charge. This provision is consistent with principles previously adopted by the Commission. To further these principles and the EAP's goal of promoting energy efficiency and demand reduction investments, this provision might be expanded to account for these costs.

## SUMMARY OF SUGGESTED AMENDMENTS

1. Grandfather existing DA customers so as not to interfere with existing DA contracts.
2. Define core and non-core with quantitative factors only (e.g. 200 kW maximum peak load), rather than qualitative factors (e.g. "ability to achieve economies of scale").
3. Commission authority to require appropriate meters for aggregators.
4. Commission authority to establish reentry fees for non-core customers receiving default service.
5. Remove restrictions on Commission rate design authority.
6. Clarify that exemptions for non-core customers' obligation to pay costs for "future DWR procurement obligations" does not include existing elements of CRS.
7. Remove or amend non-core customer wheeling provisions.
8. Eliminate periodicity requirements for procurement plans in accordance with current law (AB 57/SB 1976) (i.e. not require annual updates).
9. Include Energy Efficiency/Demand-side reduction costs in a nonbypassable charge paid by transmission and distribution ratepayers.

## RELATED LEGISLATION

- AB 816 (Reyes) would lift the current suspension on direct access transactions.

- SB 888 (Dunn, et.al.) would repeal substantial portions of the AB 1890 of 1996, and add statutory elaboration of an EC's obligation to serve and that EC's right to recovery of costs associated with that obligation.

**Legislative History:**

Senate E.U.&C.: 2-3 (failed) (7/8/03)

Assembly Floor: 67-0 (Pass to Senate) (6/3/03)

Assembly Approps.: 24-0 (do pass as amended) (5/28/03)

Assembly U&C: 11-0 (do pass) (4/28/03)

**SUPPORT/OPPOSITION** (verified 7/8/03)

Support: Bay Area Economic Forum, California Business Properties Association, California Manufacturers & Technology Association (if amended), California State University, Calpine Corporation, Pacific Gas & Electric Company (if amended), Sempra Energy (if amended), Silicon Valley Manufacturing Group, University of California.

Opposition: California Coalition of Utility Employees (CUE), California Farm Bureau Federation, Clean Power Campaign (unless amended), Environment California (unless amended), Foundation for Taxpayer and Consumer Rights, Natural Resources Defense Council (unless amended), Southern California Edison.

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**Date:** July 9, 2003

**BILL LANGUAGE:**

BILL NUMBER: AB 428      AMENDED  
BILL TEXT

AMENDED IN SENATE    JUNE 16, 2003  
AMENDED IN ASSEMBLY   JUNE 2, 2003  
AMENDED IN ASSEMBLY   APRIL 23, 2003

INTRODUCED BY    Assembly Members Richman and Canciamilla

FEBRUARY 14, 2003

An act to add Section 367.6 to the Public Utilities Code, relating to energy resources.

## LEGISLATIVE COUNSEL'S DIGEST

AB 428, as amended, Richman. Electrical corporations: core ~~supply portfolio: core bundled~~ , noncore, and core-elect customers.

(1) Under existing law, the Public Utilities Commission regulates electrical corporations. The Public Utilities Act requires the commission to authorize direct transactions between electricity suppliers and end-use customers. However, other existing law suspends the right of retail end-use customers to acquire direct access service from certain electricity suppliers after a period of time to be determined by the commission until the Department of Water Resources no longer supplies electricity under a certain provision of law. *Existing law requires the commission to review and adopt a procurement plan for each electrical corporation. The commission is required to establish procurement balancing accounts to track the differences between recorded revenues and costs to ensure that each electrical corporation timely recovers prospective procurement costs pursuant to their procurement plan.*

The bill would require the commission, on or before January 1, 2005, to adopt ~~regulatory criteria for the appropriate and reasonable composition of a core portfolio of electricity supplies to be established by each electrical corporation to meet the needs of the electrical corporation's bundled core customers, as defined, noncore customers electing to remain with the electrical corporation for at least one year, and to provide an adequate reserve capacity. Under the bill, commencing January 1, 2006, an electrical corporation would have no obligation to procure electric commodity for a noncore customer, as defined, except by contract for a term of no less than 1 year and on terms approved by the commission that reimburse the electrical corporation for all costs of providing electrical service. Commencing on that date, noncore customers could not be served from the core portfolio, except as specified, and would be served either by direct transactions or by contract with an electrical corporation.~~ The bill would require the commission, on or before January 1, 2006, to adopt rules to allow residential bundled core customers to elect to be served by direct transactions in a manner that fully compensates the electrical corporation and the Department of Water Resources for the customers' proportionate share of specified categories of costs. The bill would also require the commission to adopt rules to ensure that the returning residential bundled core customers are charged the full costs incurred by the electrical

~~corporation to provide them with electric commodity procurement service, including a minimum one year contractual obligation to take bundled electric service from the electrical corporation, unless the customer leaves the electrical corporation's service territory. The bill would require the commission to adopt corresponding rules for nonresidential bundled core customers on or before January 1, 2012.~~

rules under which noncore customers, as defined, by a date certain on or before June 30, 2005, elect whether to procure electricity service (commodity service) from an electric service provider, elect to receive commodity service from the electrical corporation under a procurement plan for a minimum period of 3 years, or receive default commodity service from the electrical corporation. Beginning January 1, 2006, an electrical corporation's obligation to provide commodity service from its procurement plan would extend only to core and core-elect customers, as defined, and to provide default commodity service to noncore customers. Default commodity service would be provided at the higher of the electrical corporation's costs of spot electricity purchases, or the tariff rate for core-elect customers purchasing commodity service pursuant to the electrical corporation's procurement plan. The commission would be required to establish rules to ensure that the costs of providing default commodity service to noncore customers are paid solely by those noncore customers, without impacting the rates and charges of core customers. The bill would require the commission, on or before July 1, 2004, to establish tariffs for noncore customers that include all applicable transmission, distribution, public goods, and cost recovery surcharge costs otherwise paid by noncore customers for certain purposes. Noncore customers that begin taking commodity service from an electric service provider on or after January 1, 2006, would be required to pay certain costs consistent with those costs that customers of a community choice aggregator are required to pay under existing law. The bill would require the commission to establish rules or tariffs that provide an option for residential customers to receive commodity service through direct transactions from renewable resources beginning January 1, 2006, consistent with cost recovery requirements applicable to community aggregators.

Because a violation of a rule or order of the commission is a crime, this bill would create a new crime, thereby imposing a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature to do all of the following:

(a) ~~Establish a market structure in which the~~  
To establish a market structure in which electrical corporations have an obligation to provide ~~bundled electric commodity procurement service only to core retail end use customers.~~

~~— (b) Allow noncore retail end use customers to elect to have their electricity commodity procured by the electrical corporations for a fixed term at rates that fully compensate the electrical corporations for the incremental costs of procuring the commodity.~~

~~— (c) Require the electrical corporations to serve as a default provider of electric commodity procurement service to noncore retail end use customers that voluntarily or involuntarily return to the electrical corporation for that service.~~

~~— (d) Provide a market structure for electric commodity service to core customers, and core-elect customers, from a combined portfolio of generation resources allocated on a nondiscriminatory, cost-of-service basis.~~

(b) To affirm the electrical corporation's obligation to provide transmission, distribution, and resource adequacy services for all customers.

(c) To allow noncore customers to elect, on prescribed terms, to receive commodity service from the electrical corporation or from an electric service provider without shifting costs to other customer classes.

(d) To require an electrical corporation to serve as default provider of commodity service, in a manner that will not increase costs of commodity service to core and core-elect customers, and to noncore customers that voluntarily or involuntarily return to the electrical corporation for service.

(e) To encourage the retention of existing and development of new, cogeneration resources to serve the state's electricity demand in a clean and efficient manner.

(f) To provide for and expedite the construction of electric generation capacity to meet the needs of a growing state and replace this state's most polluting and inefficient ~~electric~~ generation plants by phasing in a competitive retail electric commodity market for the largest, most financially stable retail end use customers of the electrical corporation.

~~— (e) Ensure the protection of core retail end use customers against payment of stranded costs by requiring departing customers to pay for power and other services provided on their behalf by the state and the electrical corporations. electric generation plants by phasing in a retail market for the most efficient and financially stable customers.~~

SEC. 2. Section 367.6 is added to the Public Utilities Code, to read:

367.6. (a) As used in this section, the following terms have the following meanings:

~~— (1) "Bundled core customers" include all retail end use customers of an electrical corporation with a maximum peak demand of less than 500 kilowatts, or a maximum peak demand as determined by the commission pursuant to subdivision (b), who are not being served, or who elect not to be served, through direct transactions.~~

~~— (2) "Noncore customers" include all retail end use customers of an electrical corporation with a maximum peak demand of 500 kilowatts or greater, or a maximum peak demand as determined by the commission pursuant to subdivision (b). For the purposes of this section, noncore customers may aggregate their peak demand from multiple meters located anywhere in an electrical corporation's service territory. Customers receiving service from electricity suppliers on January 1, 2006, shall be considered noncore customers, except any customers exempt from any direct access surcharge paid by other noncore customers, shall retain that exemption until the time they return to bundled utility service.~~

~~— (b) Commencing January 1, 2009, the commission shall reduce the~~

~~maximum peak demand threshold for defining noncore customers in subdivision (a), by converting the bundled core customers with the largest peak demand prior to reduction of the threshold to noncore customers, in sufficient amounts, so that the forecast load attributable to converted customers is forecast to meet all growth in electricity demand forecasted by the State Energy Resources Conservation and Development Commission during the following five year period and any reduction in the aggregate supply of electricity provided by Department of Water Resources contracts pursuant to Division 27 (commencing with Section 80000) of the Water Code. The commission shall complete its proceeding in this matter no later than December 31, 2007, and may not lower the threshold beyond 250 kilowatts maximum peak demand.~~

~~— (c) On or before January 1, 2005, the commission shall adopt regulatory criteria for the appropriate and reasonable composition of a core portfolio of electricity supplies to be established by each electrical corporation to meet the needs of the electrical corporation's bundled core customers and noncore customers electing to remain with the electrical corporation for at least one year pursuant to subdivision (c) and to provide an adequate reserve capacity. The commission shall include a minimum renewable energy component and demand side management programs, including, but not limited to, time of use rates and reserve requirements consistent with existing law.~~

~~— (d) (1) The core supply portfolio shall also include the following components:~~

~~— (A) Output of the generation assets retained by the electrical corporation under commission regulation.~~

~~— (B) The total amount of Department of Water Resources contract electricity purchased pursuant to Division 27 (commencing with Section 80000) of the Water Code and allocated to the core customers of the electrical corporation.~~

~~— (C) Other supplies purchased by the electrical corporation under contracts to serve the needs of its core customers.~~

~~— (D) Any spot market supplies required to serve core customers.~~

~~— (2) The commission shall adopt rules that protect the core customer of an electrical corporation from cost shifting resulting from direct transactions, customers who depart the electrical corporation's system in order to be served by a competing publicly owned utility, or undercollections of utility costs of service or costs incurred by the Department of Water Resources to serve customers who are no longer core customers. These rules shall ensure that a retail end use customer purchasing electricity from another electric service provider or electricity supplier shall reimburse the electrical corporation that previously served that customer, or had the obligation to serve that customer, on a nonbypassable basis for the categories of costs described in subdivisions (d), (e), (f), and (g) of Section 366.1.~~

~~— (3) The commission shall ensure that no customer moving from core to noncore will have any obligation for any future costs incurred by the electrical corporation or Department of Water Resources associated with the core supply portfolio that are not recovered from core customers, and that costs of the core supply portfolio shall be recoverable only from core customers and noncore customers served by electrical corporations as described in subdivision (c).~~

~~— (e) Commencing January 1, 2006, an electrical corporation has no obligation to procure electric commodity for any noncore customer except by contract for a term of not less than one year and on terms approved by the commission that reimburse the electrical corporation for all costs of providing electrical service. On or before January 1, 2005, the commission shall adopt rules, as it deems necessary to~~

~~establish a nondiscriminatory tariff for noncore customers. These rules shall include all of the following:~~

~~—(1) A time certain, no later than July 1, 2005, by which a noncore customer currently receiving electric commodity procurement service from the electrical corporation shall either elect to be served by an electricity supplier other than the electrical corporation or agree to be served by the electrical corporation for a minimum of one year.~~

~~—Noncore customers electing to remain with the electrical corporation on or before July 1, 2005, may be served from the core customer portfolio described in paragraph (1) of subdivision (d).~~

~~—(2) Notice requirements of not less than six months for noncore customers to provide notice to their electrical corporation and the Department of Water Resources of their intent to obtain service from an electricity supplier other than the electrical corporation or voluntarily contract with the electrical corporation for bundled noncore electric commodity procurement service pursuant to this subdivision.~~

~~—(3) Provisions for ensuring prompt and full recovery of costs that the electrical corporation and Department of Water Resources have incurred to serve customers pursuant to paragraph (2) of subdivision (d) and in meeting the obligation to serve. Rates and tariffs that require noncore customers who choose to return to bundled utility electric commodity procurement service to pay the actual costs incurred by the electrical corporation to procure electric commodity for that returning customer on a basis separately tariffed from the costs of the noncore portfolio of the electrical corporation for a period of not less than one year or the tariffed rate under this section, whichever is higher.~~

~~—(f) Commencing January 1, 2006, noncore customers may not be served from the core portfolio, except as provided in paragraph (1) of subdivision (e). Noncore customers shall be served by direct transactions, as described in Section 365, or by contract with an electrical corporation as described in subdivision (e). In coordination with the resource planning and procurement process defined in Section 454.5, the commission shall annually establish the appropriate mix and level of long term, medium term, and short term resource commitments to be made by the electrical corporation consistent with the utility procurement obligations defined in this section.~~

~~—(g) (1) On or before January 1, 2006, the commission shall adopt rules to allow residential bundled core customers to elect to be served by direct transactions in a manner that fully compensates the electrical corporation and the Department of Water Resources for the customers' proportionate share of the categories of costs described in subdivisions (d), (e), (f), and (g) of Section 366.1. The commission shall also adopt rules to address the return of those residential bundled core customers being served by direct transactions to bundled service that ensure that the returning customers are charged the full costs incurred by the electrical corporation to provide them with electric commodity procurement service, including a minimum one year contractual obligation to take bundled electric service from the electrical corporation, unless the customer leaves the electrical corporation's service territory.~~

~~—(2) On or before January 1, 2012, the commission shall adopt rules to allow nonresidential bundled core customers to elect to be served by direct transactions in a manner that fully compensates the electrical corporation and the Department of Water Resources for the customers' proportionate share of the categories of costs described in subdivisions (d), (e), (f), and (g) of Section 366.1. The commission shall also adopt rules to address the return of those nonresidential bundled core customers being served by direct~~

~~transactions to bundled service that ensure that the returning customers are charged the full costs incurred by the electrical corporation to provide them with electric commodity procurement service, including a minimum one year obligation to take bundled electric service from the electrical corporation, unless the customer leaves the electrical corporation's service territory.~~

~~—(h) A noncore customer shall not be responsible for any new transition costs or procurement related obligations incurred on behalf of the core portfolio during the period when the customer is served by direct transactions, except to the extent that the costs were incurred during the period when the noncore customer had elected to receive core portfolio service pursuant to paragraph (1) of subdivision (c) and the costs cover the actual cost of electricity used by the customer.~~

(1) "Commodity service" means electricity used by the customer or a supply of electricity available for use by the customer, and does not include services associated with the transmission and distribution of electricity.

(2) "Core customers" means small retail end-use customers of an electrical corporation that are unable as a result of economies of scale, to efficiently enter into direct transactions, including customers with a maximum peak demand of less than 500 kilowatts.

(3) "Noncore customers" means larger retail end users of electricity that as a result of economies of scale, can efficiently enter into direct transactions, including end users with a maximum peak demand of 500 kilowatts, or as reduced by the commission. On or before January 1, 2009, the commission may reduce the noncore customer maximum peak demand threshold to accommodate load growth and reduction of procurement obligations under Department of Water Resources power contracts being managed by the electrical corporations. When considering a reduction in the noncore threshold, the commission shall not strand generation costs in the electrical corporation's procurement plan portfolio, shift costs between core and noncore customers, or lower the threshold below 200 kilowatt maximum peak demand. On or before January 1, 2009, the Commission may additionally establish rules allowing customers to aggregate demand to meet the noncore threshold.

(4) "Core-elect customer" means a noncore customer that makes an election, to be served pursuant to the electrical corporation's procurement plan.

(b) Beginning January 1, 2006, an electrical corporation's obligation to provide commodity service from the electrical corporation's procurement plan portfolio, shall extend only to core and core-elect customers. The electric corporation's obligation to provide commodity service to noncore customers shall be limited to the provision of default service pursuant to subdivision (d). The electrical corporation's obligation to provide transmission, distribution and resource adequacy services shall extend to all customers.

(c) Beginning January 1, 2006, an electrical corporation shall have no obligation to procure electricity for noncore customers pursuant to a procurement plan, but shall have an obligation to procure electricity for core-elect customers that elect to receive commodity service for a minimum term of three years pursuant to the electrical corporation's procurement plan.

(d) The electrical corporation shall serve as a default provider of commodity service for all noncore customers. The electrical corporation shall provide default commodity service to noncore customers that, on or after January 1, 2006, voluntarily or



involuntarily return to the electrical corporation for commodity service and have not elected to take commodity service as described in subdivisions (c) and (e). Default commodity service shall be provided at the higher of the electrical corporation's cost of spot electricity purchases, or the tariff rate for core-elect customers purchasing commodity service pursuant to the electrical corporation's procurement plan. The commission shall establish rules to ensure that the costs of providing default commodity service to noncore customers are paid solely by those noncore customers, without impacting the rates and charges of core customers.

(e) On or before January 1, 2005, the commission shall adopt rules, to implement this section. These rules shall include:

(1) A date certain, on or before June 30, 2005, by which noncore customers must make an election to be served by the electrical corporation for a minimum of three years as a core-elect customer, or to receive service from an electric service provider. Noncore customers failing to make an affirmative election shall receive default commodity service.

(2) Terms and condition under which noncore customers may take default service, including the time period after which a customer must select core-elect service or return to non-utility service.

(3) Provisions to ensure prompt recovery of reasonable costs an electrical corporation incurs to serve customers pursuant to this section, and in meeting its obligation to serve, and provisions to ensure there is no cost shifting between customer classes.

(4) A method for determining the rates and charges for core and core-elect customers, and the default commodity service price, including estimated prices to be in effect as of January 1, 2006.

(5) Rules for the aggregation of customer load at multiple meters for purposes of determining the core or noncore status of a customer, including the use of appropriate meters.

(6) Provisions to ensure that no cost-shifting occurs between core and core-elect customers.

(7) A six-month notice requirement to begin receiving or to cancel core-elect service upon completion of the three year commitment.

(f) On or before July 1, 2004, the commission shall establish tariffs for a noncore customer that include all applicable transmission, distribution, public goods, and cost recovery surcharge costs otherwise paid by noncore customers for the following purposes:

(1) To transmit over nondedicated electrical corporation facilities, electricity generated by a corporation or person at one location for consumption by the same corporation or person, or an affiliated corporation, or person at a separate location.

(2) To procure electricity from new or expanded generation facilities.

(3) To procure electricity from a cogeneration facility that sold power to the electrical corporation on or after June 1, 2003.

(g) In coordination with the resource planning and procurement process established in Section 454.5, the commission shall annually establish the appropriate mix and level of long-term, medium-term, and short-term commitments to be made by an electrical corporation, consistent with the electrical corporation procurement obligations established in this section, and ensure the flexibility needed to minimize stranded procurement costs.

(h) Noncore customers that begin taking commodity service from an electric service provider on or after January 1, 2006, shall be required to pay the costs described in subdivisions (d), (e), (f), and (g) of Section 366.1, to the extent such costs continue to be

incurred by the electrical corporations, as determined by the commission. Any customer receiving service under a direct transaction prior to September 20, 2001, shall not incur any additional obligations under this requirement unless they become core-elect customers.

(i) In consultation with the State Energy Resources Conservation and Development Commission and the Independent System Operator, the commission shall establish resource adequacy requirements that ensure the availability of planning reserves sufficient to serve all customers of the electrical corporation, including noncore and community choice aggregation customers. The resource adequacy requirements shall ensure cost recovery by the electrical corporation for acquired reserves through a nonbypassable component of the electrical corporation's transmission and distribution charges.

(j) The commission shall ensure that noncore customers moving from core-elect to noncore commodity service at the end of a three-year term, shall not have an obligation for any future costs incurred by the electrical corporation or Department of Water Resources associated with the electrical corporation's procurement plan, and that costs of the electrical corporation's procurement plan shall be recoverable only from core and core-elect customers served by the electrical corporation pursuant to subdivision (c).

(k) The commission shall ensure that all electric service providers and community choice aggregators meet the renewable portfolio standard and support demand side management programs, either directly or through in-lieu arrangements approved by the commission.

(l) The commission shall establish rules or tariffs that provide an option for residential customers to receive commodity service through direct transactions from renewable resources beginning January 1, 2006, that fully compensates the electrical corporation and the Department of Water Resources for the customer's proportionate share of costs consistent with subdivisions (d), (e), (f), and (g) of Section 366.1.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.